

**BEFORE THE ADMINISTRATIVE HEARING COMMISSION  
STATE OF MISSOURI**

**MICHAEL CHERRY**

**Petitioner,**

**vs.**

**Director of Department of Insurance,  
Financial Institutions and Professional  
Registration,**

**Respondent.**

**Case No.: 08-1917 DI**

**081110538C**

**FILED**

**NOV 20 2008**

**ADMINISTRATIVE HEARING  
COMMISSION**

**RESPONDENT'S ANSWER**

COMES NOW, Linda Bohrer, Acting Director of the Department of Insurance,  
Financial Institutions and Professional Registration ("Department" or "Respondent"),  
through counsel, and hereby answers Petitioner's complaint as follows:

1. To the extent Petitioner alleges Respondent wrongfully denied Petitioner's  
Application for Renewal for his bail bond agent license, Respondent denies the same.

In further answer, Respondent states as follows:

2. On October 7, 2008, Respondent issued an order refusing to renew Petitioner's  
bail bond agent license.
3. On October 7, 2008, the Department notified Petitioner by certified mail, that his  
Application for Renewal for his bail bond agent license was refused.
4. In the notice, order and petition mailed to Petitioner on October 7, 2008, the  
department informed Petitioner of his right to appeal the refusal of his application for  
licensure within thirty (30) days as provided in, and in compliance with, § 621.120,  
RSMo (2000).

## **GROUND FOR DENIAL**

5. Sufficient legal and factual grounds existed for denying Petitioner's renewal application for a bail bond agent license. They are as follows:
  - a. Petitioner pled guilty to the felony of criminal nonsupport, subjecting him to refusal of the renewal of his bail bond agent license, under § 374.750, RSMo (2000), and § 374.755.1(2), RSMo (Supp. 2006); and
  - b. Petitioner is no longer qualified to hold a bail bond agent license because he fails to meet the qualifications for a surety on bail bonds as provided by Supreme Court Rule 33.17, as provided in § 374.715.1, RSMo (Supp. 2007).
6. Sufficient legal and factual grounds existed for denying Petitioner's renewal application for a bail bond agent license on the grounds that Petitioner had entered a "plea of guilty...within the past fifteen years in a criminal prosecution under any state...law for...a crime involving moral turpitude...whether or not sentence is imposed...". Sections 374.715.1 and 374.755.1(2), RSMo (Supp. 2007).
7. The facts are as follows:
  - a. Petitioner was first licensed by the Department as a bail bond agent on January 18, 2005.
  - b. Petitioner's bail bond agent license expired on December 31, 2007.
  - c. On January 3, 2008, Petitioner filed a Missouri Uniform Renewal Application for Bail Bond or Surety Recovery License ("Renewal Application") with the Department seeking to renew his bail bond agent license.
  - d. On the Renewal Application, Part III, Question B asks:

Have you ever been adjudicated, convicted, pled or found guilty of any...felony...? Applicants are required to report all criminal cases whether or not a sentence has been imposed, a suspended imposition of sentence has been entered or the applicant has pled nolo contendere (No contest)...

- e. Petitioner checked the “YES” box in response to the immediately preceding question.
  - f. On April 15, 2002, Petitioner pleaded guilty in the Circuit Court of Cass County Missouri to criminal nonsupport, which offense is a violation of § 568.040.4, RSMo and is a class D felony because the total arrearage was in excess of \$5,000.
  - g. The Circuit Court of Cass County suspended the imposition of sentence and placed Petitioner on probation for a period of five years.
8. Section 374.750, RSMo (2000), provides:
- The department may refuse to issue or renew any license required pursuant to section 374.700 to 374.775 for any one or any combination of causes stated in section 374.755.
9. Section 374.755.1, RSMo (Supp. 2006), provides, in part:
- The department may cause a complaint to be filed...for any one or any combination of the following causes...
- (2) Final adjudication or a plea of guilty...within the past fifteen years in a criminal prosecution under any state...law for...a crime involving moral turpitude...whether or not sentence is imposed...;
10. Section 374.715.1, RSMo (Supp. 2006), provides, in part:
1. Applications for...licensure as a bail bond agent...*shall* contain such information as the department requires...Each application shall be accompanied by proof satisfactory to the department that the applicant is...of good moral character, and meets the qualifications for surety on bail bonds as provided by supreme court rule...

(Emphasis added).

11. Supreme Court Rule 33.17 provides, in part:

A person *shall not* be accepted as a surety on any bail bond unless the person:...

(c) Has not, within the past 15 years, been found guilty or *pleaded guilty*...to:

(1) Any felony of this state, any other state, or the United States; or

(2) Any other crime of this state, any other state, or the United States involving moral turpitude, whether or not a sentence was imposed;...

(Emphasis added).

12. Petitioner may be disqualified and therefore, refused a renewal of his bail bond license, based upon § 374.750, RSMo (2000) and § 374.755.1(2), RSMo (Supp. 2007), for his 2002 felony guilty plea.

13. Because § 374.750, RSMo (2000), provides that the Director “may” refuse a license renewal, the Director has discretion under this section for disqualifying Petitioner for the 2002 guilty plea. *State Bd. Of Regis’n for the Healing Arts v. Finch*, 514 S.W.2d 608 (Mo. App., E.D. 1984); *Joyce v. Director of Insurance*, No. 97-3416 DI (Mo. Admin. Hearing Comm’n May 28, 1998); *James A. Gillihan v. Director of Insurance*, No. 04-1652 DI (Mo. Admin. Hearing Comm’n December 21, 2006); *Rochelle K. Whatley v. Director of Insurance*, No. 05-1074 DI (Mo. Admin. Hearing Comm’n January 3, 2007). A bail bond agent has quasi-police powers including the authority to take custody of defendants released on bail by the courts. While a plea of guilty to a charged felony may have been entered for reasons other than actually being guilty of the crime, it does reveal a risk to the courts and the public-at-large in licensing Petitioner. In applying this

discretion, Respondent has considered Petitioner's history and all of the circumstances surrounding Petitioner's Renewal Application. For these reasons, Respondent exercised her discretion in refusing to renew Petitioner's bail bond agent license.

14. Moreover, Respondent *must* refuse Petitioner's Renewal Application because Petitioner's felony guilty plea within the past 15 years disqualifies him from licensure as a bail bond agent pursuant to Supreme Court Rule 33.17(c) and § 374.715, RSMo (Supp. 2007). "Rule 33.17 uses the term 'shall' in regard to its prohibition in subsection (c). Section 374.715 uses the term 'shall' in applying the terms of Rule 33.17 to [the] renewal application. 'Shall' signifies a mandate and means 'must' in the present tense." *Edward Lynn Loughary v. Director of Insurance*, No. 07-1610 DI (Mo. Admin. Hearing Comm'n Nov. 5, 2008). Section 374.715, RSMo (Supp. 2007) and Rule 33.17 impose "a mandatory and not a discretionary requirement...[U]nder those provisions, [Petitioner] cannot be licensed as a...bail bond agent because of his felony convictions." *Phillip L. Joyce v. Director of Insurance*, No. 00-2668 DI (Mo. Admin. Hearing Comm'n July 3, 2001). As such, Respondent has no discretion and must refuse Petitioner's Renewal Application pursuant to Rule 33.17(c) and § 374.715, RSMo.

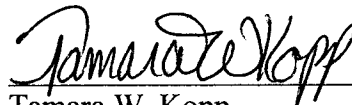
#### **AFFIRMATIVE DEFENSE**

Petitioner's complaint does not comply with § 621.120, RSMo (2000), or 1 CSR 15-3.350(2)(C), in that Petitioner has not set out with particularity his qualifications for licensure and should therefore be dismissed. Specifically, Petitioner failed to state that he meets the qualifications for licensure as a bail bond agent, namely his "qualifications for surety on bail bonds as provided by supreme court rule. . ." Supreme Court Rule 33.17

states that surety on a bail bond will not be accepted from any person who has pled guilty to a felony within the past fifteen (15) years. Section 374.715.1, RSMo (Supp. 2007).

WHEREFORE, Respondent respectfully requests this Commission uphold the decision of the Department of Insurance, Financial Institutions and Professional Registration to deny Petitioner's application for renewal of his bail bond agent license.

Respectfully submitted,

A handwritten signature in cursive script, reading "Tamara W. Kopp", written over a horizontal line.

Tamara W. Kopp  
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ATTORNEY FOR RESPONDENT  
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**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that a true and correct copy of the foregoing was mailed first class, with sufficient postage attached, via the United States Postal Service on this 20<sup>th</sup> day of November, 2008, to:

Michael Cherry  
605 East 164th Terrace  
Belton, Missouri 64012

Kimberly Linder